Reprinted
February 9, 1999

SENATE BILL No. 355

DIGEST OF SB355 (Updated February 8, 1999 3:28 pm - DI 100)

Citations Affected: IC 24-4.5.

Synopsis: Deferred presentment transactions. Defines a deferred presentment transaction as a transaction in which a person licensed by the department of financial institutions (licensee) cashes a customer's check without presenting the check for payment for up to 31 days. Provides that a deferred presentment transaction is not a loan. Limits the amount of fees and additional charges a licensee can require the maker of a check to pay. Requires a deferred presentment transaction to be in writing. Provides penalties to the customer in a deferred presentment transaction if the maker's account has insufficient funds, is closed, or there is a stop payment order on the check. Prohibits a customer from having more than four deferred presentment transactions totaling more than $500 at any one time. Prohibits a licensee from taking an assignment of earnings of the maker for payment or security for payment of a deferred presentment transaction.

Effective: July 1, 1999.

Paul

January 11, 1999, read first time and referred to Committee on Insurance and Financial Institutions.
February 1, 1999, reported favorably — Do Pass.
February 8, 1999, read second time, amended, ordered engrossed.

Reprinted
February 9, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 355

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-4.5-7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 7. Deferred Presentment

Sec. 101. Short Title - This chapter shall be known and may be cited as Uniform Consumer Credit Code - Deferred Presentment.

Sec. 102. This chapter applies to deferred presentment transactions as defined in section 106 of this chapter. The provisions for supervised loans under IC 24-4.5-3-503 through IC 24-4.5-3-507 apply to this chapter.

Sec. 103. The following definitions apply to this chapter:

"Department" . . . . Section 7-104
"Check" . . . . Section 7-105
"Deferred presentment transaction" . . . . Section 7-106
"Maker" . . . . Section 7-107

"Licensee" . . . . Section 7-108
"Renewal" . . . . Section 7-109

Sec. 104. As used in this chapter, "department" means the department of financial institutions.

Sec. 105. As used in this chapter, "check" means any check, draft, money order, personal money order, traveler's check, or other demand instrument for the transmission or payment of money.

Sec. 106. As used in this chapter, "deferred presentment transaction" means a transaction where a check is cashed by a person licensed under this chapter and by mutual agreement between the licensee and the maker of the check, and the check's presentment or negotiation is deferred for a period of time not to exceed thirty-one (31) days. A deferred presentment transaction that complies with this chapter may not be construed to be a loan for any purpose.

Sec. 107. As used in this chapter, "maker" means any person who writes a check and upon whose account the check is drawn.

Sec. 108. As used in this chapter, "licensee" means a person duly licensed by the department to engage in the deferred presentment business under this chapter.

Sec. 109. As used in this chapter, "renewal" means the termination of an existing deferred presentment agreement solely by the payment of fees then due the licensee and the substitution of a new check drawn by the maker pursuant to a new deferred presentment agreement.

Sec. 201. No licensee shall charge fees in excess of eighteen percent (18%) of the amount advanced to the maker of the check whose presentment or negotiation is deferred.

Sec. 202. (1) A deferred presentment agreement may provide for the payment by the maker of reasonable attorney's fees after default and referral to an attorney who is not a salaried employee of the licensee. A provision in violation of this section is unenforceable.

(2) An additional charge may be made not to exceed twenty dollars ($20) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the maker.

Sec. 301. (1) Each deferred presentment transaction must be documented by a written agreement. The written agreement must contain the name or trade name of the licensee, the transaction date, the amount of the check, and a statement of the total amount

of fees charged, expressed both as a dollar amount and its effective annual percentage rate (APR), and all other disclosures required under the federal Truth-In-Lending Act (15 U.S.C. 1601) and state law. The written agreement must authorize the licensee to defer presentment or negotiation of the check until a specific date, not later than thirty-one (31) days from the date the check is accepted by the licensee.

(2) Makers who write a check for a deferred presentment transaction on an account that was closed on the date of the transaction or that is closed before the agreed upon negotiation date of the deferred presentment are subject to all civil and criminal penalties available at law. If a check is returned to the licensee from a payor financial institution due to insufficient funds, a closed account, or a stop payment order, the licensee may recover the full amount charged by that institution. Except as otherwise provided, an individual who issues a personal check to a licensee under a deferred presentment agreement is not subject to criminal penalty.

(3) Proceeds to the maker in a deferred presentment transaction may be made in the form of a licensee's business check, money order, or cash.

(4) No licensee may roll over any deferred presentment transaction more than three (3) consecutive times, after which the deferred presentment check must be paid off in cash or its equivalent by the maker or deposited by the licensee.

(5) The face amount of a check taken for deferred presentment may not exceed five hundred dollars ($500) exclusive of the fees allowed by this chapter.

(6) No licensee or person related to the licensee by common ownership or control may have outstanding more than four (4) checks from any one (1) customer at any time, nor may the aggregate face value of all outstanding checks from any one (1) maker payable to any licensee exceed five hundred dollars ($500). Each licensee may rely on a written representation of a maker regarding the existence of any outstanding checks for deferred presentment.

(7) A licensee may carry on other business at a location where it engages in deferred presentment transactions unless it carries on such other business for the purpose of evasion or violation of this chapter.

(8) A licensee under this chapter shall charge only those fees specifically authorized in this chapter.

(9) A licensee shall provide a notice in a prominent place on each deferred presentment agreement in at least ten (10) point type in substantially the following form:

NOTICE

STATE LAW PROHIBITS YOU FROM HAVING MORE THAN 4 DEFERRED PRESENTMENT TRANSACTIONS TOTALING MORE THAN $500 OUTSTANDING AT ANY ONE TIME. FAILURE TO OBEY THIS LAW COULD CREATE SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.

Sec. 401. A licensee may not take an assignment of earnings of the maker for payment or as security for payment of a deferred presentment transaction or otherwise. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the maker. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable and is otherwise permitted by law.

COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 355, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 355 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 6, Nays 2.

SENATE MOTION

Mr. President: I move that Senate Bill 355 be amended to read as follows:

Page 3, line 2, after "(APR)" insert **", and all other disclosures required under the federal Truth-In-Lending Act (15 U.S.C. 1601) and state law".**

(Reference is to SB 355 printed February 2, 1999)

LUTZ